

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

DELAWARE HEALTH
CORPORATION,

Plaintiff,

v.

MICHAEL O. LEAVITT,

Defendant.

CIV. NO. 07-829-SLR

* * * * *

MOTION FOR SUMMARY JUDGMENT
FILED BY PLAINTIFF DELAWARE HEALTH CORPORATION

Now comes Delaware Health Corporation, doing business as Harbor Healthcare & Rehabilitation Center (“Harbor”), Plaintiff, by its undersigned counsel, and moves, pursuant to Federal Rule of Civil Procedure 56, for summary judgment, on the grounds that there is no genuine dispute as to any material issue of fact and Harbor is entitled to a reversal of the ruling of the Secretary of the Department of Health and Human Services (collectively “DHHS”), as a matter of law, and for reasons state:

1. This case arises out of an appeal from the decision of DHHS reversing a ruling by the Medicare Provider Reimbursement Revision Board (“PRRB”).
2. The parties, with the approval of the Court, have agreed to file cross motions for summary judgment to resolve this administrative appeal.
3. The grounds for the motion are as follows:

3.1 The Intermediary (the Medicare Contractor which performs audits upon submissions for reimbursement by Medicare providers) failed to provide timely

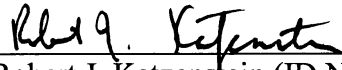
notice of intent to reopen within the time frame provided by the applicable regulations and DHHS manuals.

3.2 DHHS's reversal and affirmance of the PRRB ruling was arbitrary, capricious and lacked evidentiary support.

3.3 And for the reasons set forth in the accompanying Opening Brief of Plaintiff Delaware Health Corporation in Support of its Motion for Summary Judgment, which is incorporated by reference herein.

Respectfully submitted by:

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Dated: June 13, 2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of June, 2008, a copy of Motion for Summary Judgment filed by Plaintiff Delaware Health Corporation was served in the manner indicated on the following:

BY E-FILE

Lesley Frieder Wolf, Esquire
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